

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 256 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
-

STATE OF GUJARAT

Versus

JAYANTIBHAI BHIKHUBHAI KOLI PATEL

Appearance:

MR KT DAVE, ADDL PUBLIC PROSECUTOR for Appellant
..... for Respondent No. 1-3

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 01/07/2002

ORAL JUDGEMENT (Per : MR.JUSTICE J.R.VORA)

1. Heard learned APP Mr. K.T. Dave for the
appellant State. This is an appeal preferred by the

State against the judgment and order dated 12.01.2001 of Addl. Sessions Judge, Navasari Camp at Valsad, acquitting the respondents accused in Session Case No. 72/1999.

2. Brief facts reveal that complainant Jugalbhai Parvatilal Shaili is doing business of contract and owns a Motorcycle bearing No. GD 03/A 6389. On 15th February, 1989, the construction work of the complainant was executed at village Maroli. On that day, after visiting Maroli along with his younger brother Jayrambhai on the above said motorcycle, complainant came to taluka panchayat office at Umargam for obtaining the amount for the work done where he was handed over a cheque of Rs. 1 lac in pursuance of the contract executed and to be executed by the complainant. For the encashment of the cheque, complainant and his younger brother came to the State Bank of India, Umargam and encashed the cheque for Rs. 1,36,000/-, which was kept in a plastic bag and that bag was kept in the dickey of the motorcycle. Complainant and his younger brother thereafter went to village Daheri where they made payments to the labourers to the extent of Rs. 45,800/-. He was having Rs.10,000/- of his own. So, thereafter the complainant was having Rs. 1,00,200/which as aforesaid, he kept in a plastic bag and that bag was again kept in the dickey of his motorcycle. From Umargam via Sanjana, the complainant wanted to visit village Maroli at about 5'0 clock in the evening. One motorcycle of Hero Honda Splendor make was following the complainant and his younger brother. There were three persons on the said motorcycle which was following the complainant. At about 5.45 p.m. when they reached Ghodipadi bus station near village Maroli, motorcycle which was coming behind, overtook the motorcycle of the complainant and one of the persons out of three, seized the shirt collar of the younger brother of the complainant - Jayrambhai, so the complainant stopped the motorcycle. They sprinkled chilly powder in the eyes of Jayrambhai while complainant tarried such attempt and those three persons along with the motorcycle of the complainant ran away from the spot. MLA of Umargam one Mr. Ramanbhai Padkar came after on the place of incident and complainant conveyed this story to him. On complaint being lodged about the robbery committed of the motorcycle and the amount of Rs.1,00,200/-, Umargam Police investigated the offence and submitted a chargesheet against the present respondent for the offences punishable under Sections 394 and 120(B) of the IPC.

3. The trial was conducted at Valsad and after

recording of the evidence, learned Addl. Sessions Judge after hearing the parties acquitted the respondent - accused and hence this Appeal by the State.

4. Needless it is to observe that the order and judgment of acquittal cannot be interfered unless it is found that the order of acquittal is recorded after misreading and misappreciating the evidence or the order is so erroneous and so perverse that miscarriage of justice is caused. While considering the facts on the record, it appears that there was no convincing evidence against the accused to prove allegations against them beyond reasonable doubt. Apart from this fact while complainant was put to scrutiny in cross-examination, he failed to establish that he had in possession at relevant time the amount which he complained of, was robbed by the accused. The evidence reveals that the cheque was given in the name of one Bhanumatiben, whose statement was not recorded. This fact is not narrated by the complainant in his complaint. If the cheque was in the name of Bhanumatiben given by the Taluka Panchayat, Umargam, then question arises how the same was encashed by the complainant. No statement of Bhanumatiben was recorded by Police. Therefore, we are in complete agreement with the reasoning given by the Trial Judge that in the first place the complainant failed to prove that the complainant possessed in fact the amount which he alleged to have been robbed by the accused. The motorcycle of the complainant was recovered by the Police not from the accused but from the place where it was kept unattended. The amount which was recovered to the tune of Rs.3,500/- from the accused could not be proved to be the amount which the accused alleged to have taken away from the complainant especially when the prosecution failed to establish that the complainant was possessing the amount which he referred in the complaint. Then there is only evidence of identification parade against the accused which requires consideration. Undoubtedly, the accused can be convicted solely on the evidence of identification parade if the same inspires the confidence. While re-appreciating and scanning the evidence, we found that no proper description of the accused was given by the complainant or his brother in the complaint or in the statement more so because one of the accused is one eyed. This is striking and distinguishable mark which one would immediately notice and describe. However, complainant and his young brother failed to do so. The Executive Magistrate also failed to take care which he was required to take while conducting the identification parade. The dummies brought in the identification parade, were not resembling any of the accused. The panchas which were

selected for the identification parade appears not to be independent. One of the panchas Mohanbhai Patel was known to the complainant before the incident and that facts has been proved. All these facts did not inspire confidence in the mind of the trial judge that identification parade was held carefully and independently. In this view of the matter while carefully going through the evidence of identification parade, we felt that the same does not inspire confidence and the learned Trial Judge rightly did not put any reliance on this evidence. Apart from the charges under Sections 394 and 395 which were charged against three accused and not against five accused, the incident as narrated by the complainant, could not be proved beyond reasonable doubt by the prosecution and the case of the prosecution is therefore collapses and the accused are entitled to the benefit of doubt. In this view of the matter, we do not find any reason to interfere in the order of acquittal.

5. For the reasons aforesaid, we refuse Leave to file Appeal against the acquittal under Sec. 378(3) of the Criminal Procedure Code and this Appeal stands dismissed.

(Y.B. Bhatt, J.) (J.R. Vora, J.)
p.n.nair